

ICJI 1205 AGGRAVATED ASSAULT

INSTRUCTION NO.

In order for the defendant to be guilty of Aggravated Assault, the State must prove each of the following:

1. On or about [date],
2. in the state of Idaho,
3. the defendant [name] committed an assault upon [name or initials of victim]
4. by [description of conduct alleged in the charging document], and
5. the defendant committed that assault [with a deadly weapon or instrument but without intent to kill] [or] [by any means or force likely to produce great bodily harm.] [or] [with any vitriol, corrosive acid, or a caustic chemical of any kind.]

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

Comment

I.C. § 18–905. The definition of "deadly weapon" is set out in ICJI 1206. No definition of "great bodily harm" is necessary, see the comment to ICJI 1206 and ICJI 1207. The bracketed words "but without the intent to kill" should be used only when the jury is instructed on "Aggravated Assault" as an included offense of a higher offense that includes an intent to kill. Assault is defined in ICJI 1201.

The charging document apprises the defendant in general terms of the manner in which he is alleged to have committed the crime charged. If there is evidence of other uncharged conduct by the defendant which could also fit within the statutory definition of the crime charged and if the jury is merely instructed regarding the statutory definition of the crime, the defendant may be denied due process by being convicted for a crime different from that charged. *State v. Sherrod*, 131 Idaho 56, 951 P.2d 1283 (Ct. App. 1998). Therefore, in that circumstance the jury instruction should include, in general terms, the description of the conduct alleged in the charging document to constitute the crime charged.